

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 995  
Committee Substitute Favorable 7/11/95

Short Title: Venture Capital Investment Incentive.

(Public)

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Sponsors:

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Referred to:

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April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North Carolina Enterprise Corporations".

Sec. 2. Article 3 of Chapter 53A of the General Statutes, as amended by this act, is further amended by adding a new Part to read:

**"PART 3. CERTIFIED NORTH CAROLINA CAPITAL COMPANIES.**

**"§ 53A-70. Requirements for certification of a certified North Carolina capital company.**

(a) Initial Certification. – In order to be initially certified as a certified North Carolina capital company, a company must satisfy the following requirements:

- (1) It is a partnership, corporation, trust, or limited liability company, whether for-profit or nonprofit, whose primary business activity is the investment of cash in approved business ventures.

1           (2)       Its cash, marketable securities, and other liquid assets equal at least  
2                   two hundred thousand dollars (\$200,000).

3           (3)       Its officers and its board of directors, partners, trustees, or managers  
4                   are thoroughly acquainted with the requirements of this Part.

5       (b)       Continuing Certification. – To remain certified as a certified North Carolina  
6       capital company, the company must satisfy the following requirements:

7           (1)       Within three years after the date it was initially certified, at least  
8                   thirty percent (30%) of the certified capital invested in the company  
9                   must be placed in approved investments.

10          (2)       Within five years after the date it was initially certified, at least fifty  
11                   percent (50%) of the certified capital invested in the company must  
12                   be placed in approved investments.

13          (3)       It shall not invest in a single approved business venture an amount  
14                   that is more than fifteen percent (15%) of the total certified capital  
15                   under the company's management at the time of the investment.

16       (c)       Permanent Certification. – A certified North Carolina capital company that has  
17       satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in  
18       approved investments, as demonstrated by its most recent financial statement and report  
19       filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no  
20       longer required to obtain continuing certification as required in G.S. 53A-71. A certified  
21       North Carolina capital company that has qualified for permanent certification must  
22       continue to submit annual financial statements and reports under G.S. 53A-71 for three  
23       years after it qualifies for permanent certification.

24       **"§ 53A-71. Procedure for initial and continuing certification; reports.**

25       (a)       Initial Certification. – In order to be initially certified as a certified North  
26       Carolina capital company, a company must file an application with the Division and pay  
27       the initial certification fee set by the Secretary of State. The application shall include any  
28       information and supporting documents required by the Secretary of State to determine  
29       whether the company qualifies for initial certification. Within 60 days after an  
30       application is filed, the Division shall determine whether the applicant qualifies for initial  
31       certification and shall either issue the certification or shall refuse the certification and  
32       notify the applicant in detail of the grounds for the refusal, including suggestions for the  
33       removal of those grounds.

34       (b)       Continuing Certification. – A certified North Carolina capital company that has  
35       not qualified for permanent certification must, in order to remain certified, submit an  
36       annual application for continued certification and pay the annual review fee set by the  
37       Secretary of State. The request shall include any information and supporting documents  
38       required by the Secretary of State to determine whether the company qualifies for  
39       continued certification.

40       The Division shall conduct an annual review of each certified North Carolina capital  
41       company that has not qualified for permanent certification to determine if the company is  
42       in compliance with the requirements for initial and continuing certification and to ensure  
43       that the company's investments are in compliance with this Part. The review shall be

1 based upon the company's financial statements and other information submitted in  
2 accordance with this section.

3 (c) Application Forms; Fees. – Applications for initial and continuing certification  
4 under this section shall be in the form required by the Secretary of State. The Secretary  
5 of State shall prepare blank forms for the applications. Each application shall be signed  
6 by the owners, a manager, or an executive officer of the company. There shall be  
7 annexed to the application the affirmation of the person making the application in the  
8 following form: 'Under penalties prescribed by law, I certify and affirm that to the best  
9 of my knowledge and belief this application is true and complete.' A person who submits  
10 a false application is guilty of a Class 1 misdemeanor.

11 The Secretary of State may charge an applicant a fee for initial certification as a  
12 certified North Carolina capital company and a fee for annual review for continuing  
13 certification as a certified North Carolina capital company. The fees set by the Secretary  
14 of State may not exceed the estimated cost to the Division of initial certification or annual  
15 review, as appropriate, as determined by the Secretary of State.

16 (d) Periodic Reports. – Each certified North Carolina capital company shall  
17 provide the Division an annual audited financial statement and report that includes an  
18 opinion of an independent certified public accountant. The audit shall address the  
19 methods of operation and conduct of the business of the company to determine whether  
20 the company has complied with this Part and whether the cash invested in the company  
21 has been invested as required by this Part. The audit shall also determine whether each  
22 business in which the company has invested is an approved business venture as defined in  
23 this Article. In addition, each certified North Carolina capital company shall provide the  
24 Division a midyear, unaudited update of its annual financial statement and report. The  
25 reports and updates shall be in the form prescribed by the Secretary of State and shall  
26 include any information required by the Secretary of State about the company and about  
27 the approved business ventures in which it has invested.

28 A certified North Carolina capital company that has not qualified for permanent  
29 certification shall submit the annual financial statement and report and the midyear  
30 update on the due dates specified by the Division. A certified North Carolina capital  
31 company that has qualified for permanent certification is no longer required to submit  
32 midyear updates but shall continue to submit the annual financial statement and report on  
33 the due dates specified by the Division for three years after the company qualifies for  
34 permanent certification. Thereafter, no additional financial statements and reports are  
35 required under this subsection.

36 **"§ 53A-72. Distributions.**

37 A certified North Carolina capital company may make qualified distributions at any  
38 time. A certified North Carolina capital company may, without restriction, make  
39 distributions and payments to debt holders with respect to debt owed them by the  
40 company. A certified North Carolina capital company may make other distributions only  
41 after it has qualified for permanent certification.

42 **"§ 53A-73. Tax credits.**

1 A person who invests cash in a certified North Carolina capital company is entitled to  
2 a tax credit as provided in Article 8C of Chapter 105 of the General Statutes.  
3 Notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General  
4 Statutes, a certified North Carolina capital company is not allowed a tax credit under that  
5 Division for its investments.

6 **"§ 53A-74. Decertification of certified North Carolina capital company.**

7 (a) Grounds for Decertification. – Any material violation of this Part shall be  
8 grounds for decertification under this section.

9 (b) Procedure for Decertification. – If the Division determines that a certified  
10 North Carolina capital company is not in compliance with any requirement for continuing  
11 certification, it shall, by written notice, inform the officers of the company and the board  
12 of directors, manager, trustees, or general partners that the company will be decertified in  
13 120 days after the date the notice is mailed unless the company corrects the deficiencies  
14 to bring itself in compliance with the requirements for certification. At the end of the  
15 120-day grace period, if the certified North Carolina capital company is still not in  
16 compliance, the Division shall decertify the company and send a notice of decertification  
17 to the company and to the Department of Revenue and the Department of Insurance.

18 (c) Effect of Decertification. – If a certified North Carolina capital company is  
19 decertified, no further tax credits for an investment in the company are allowed pursuant  
20 to G.S. 105-228.10D.

21 **"§ 53A-75. Rules; report.**

22 The Secretary of State may adopt rules to implement this Part. The Secretary of State  
23 shall report to the Legislative Research Commission by October 1 of each odd-numbered  
24 year and by February 1 of each even-numbered year the number of certified North  
25 Carolina capital companies certified under this Part, the date each company was created,  
26 the amount and percentage of certified capital invested by each company, and any other  
27 information requested by the Legislative Research Commission."

28 Sec. 3. G.S. 53A-37 reads as rewritten:

29 **"§ 53A-37. Definitions.**

30 The following definitions apply in this Article:

31 (1) **Approved business venture.** – A business that satisfies all of the  
32 following conditions as of the time of a certified North Carolina  
33 capital company's first investment in the business:

34 a. It is headquartered in this State, it operates primarily in this State  
35 or does substantially all of its production in this State, and it  
36 employs a majority of its employees in this State.

37 b. It has no more than 300 employees and, during its most recent  
38 fiscal year, it had gross revenues of no more than seven million  
39 dollars (\$7,000,000) on a consolidated basis as determined in  
40 accordance with generally accepted accounting principles.

41 c. It is not a subsidiary of another corporation.

42 d. It satisfies the conditions established in G.S. 105-163.013(b)(3)  
43 through (6).

- 1           (2)     Approved investment. – The investment of cash by a certified North  
2           Carolina capital company in such a manner as to acquire capital in a  
3           business that, at the time of the company's first investment in the  
4           business, was an approved business venture. The capital acquired  
5           may be any debt, equity, or hybrid security, whether secured or  
6           unsecured, of any nature, including a debt instrument or security that  
7           has the characteristics of debt but provides for conversion into equity  
8           or equity participation instruments such as options or warrants.
- 9           (3)     Business. – A corporation, a partnership, an association, a limited  
10          liability company, or a sole proprietorship operated for profit.
- 11          (4)     Certified capital. – The cash invested in a certified North Carolina  
12          capital company, either in the form of equity or debt capital, during  
13          the 365-day period after the company has been initially certified as  
14          provided in Part 3 of this Article.
- 15          (5)     Certified North Carolina capital company. – A partnership,  
16          corporation, trust, or limited liability company whose primary  
17          business activity is the investment of cash in approved business  
18          ventures and that is certified by the Secretary of State as provided in  
19          Part 3 of this Article.
- 20          (6)     Division. – The Securities Division of the Department of the  
21          Secretary of State.
- 22          ~~(2)~~(7) Equity security. – Common stock, preferred stock, an interest in a  
23          partnership, subordinated debt, or a warrant that is convertible into, or  
24          entitles the holder to receive upon its exercise, common stock, preferred  
25          stock, or an interest in a partnership.
- 26          (8)     Reserved.
- 27          ~~(3)~~(9) Mezzanine finance. – An investment in the equity securities or  
28          subordinated debt of a Qualified North Carolina Business.
- 29          (10)    Person. – An individual, a corporation, a partnership, an association,  
30          a trust, a limited liability company, or another legal entity.
- 31          (11)    Qualified distribution. – A distribution or payment to equity owners  
32          of a certified North Carolina capital company or to their  
33          shareholders, officers, directors, partners, members, managers,  
34          employees, or affiliates, in connection with any of the following:
- 35            a.     Reasonable costs and expenses of forming, syndicating,  
36            managing, and operating the company, including management  
37            fees.
- 38            b.     An increase in State or federal taxes, penalties, or interest of the  
39            company's equity owners to the extent the increase relates to the  
40            ownership, management, or operation of the company.
- 41          ~~(4)~~(12) Qualified North Carolina Business. – A business whose headquarters  
42          and principal business operations are located in North Carolina and  
43          which, together with its affiliates on a consolidated basis, had gross

1 income during the immediately preceding fiscal year, determined in  
2 accordance with generally accepted accounting principles without  
3 taking into account extraordinary items, of less than forty million dollars  
4 (\$40,000,000).

5 ~~(5)~~(13)Rural areas. – Any county in North Carolina which does not include  
6 within its boundaries a city, as defined by G.S. 160A-1(2), with a  
7 population greater than one percent (1%) of the population of North  
8 Carolina.

9 ~~(6)~~(14)Security. – A security as defined in G.S. 78A-2(11).

10 ~~(7)~~(15) Subordinated debt. – Indebtedness that is or will be  
11 subordinated to other indebtedness of the issuer. Subordinated  
12 debt may be convertible into common stock, preferred stock, or  
13 an interest in a partnership.

14 ~~(8)~~(16)Traditional Financial Institutions–financial institutions. – Corporations or  
15 associations chartered under ~~Chapters~~Chapter 53 or 54B of the General  
16 Statutes."

17 Sec. 4. Chapter 105 of the General Statutes is amended by adding a new  
18 Article to read:

19 **"ARTICLE 8C.**

20 **"PREMIUMS TAX CREDIT FOR INVESTMENTS IN**  
21 **NORTH CAROLINA SMALL BUSINESSES.**

22 **"§ 105-228.10A. Purpose.**

23 The purpose of this Article is to stimulate a substantial increase in venture capital  
24 investments in North Carolina by providing an incentive for insurance companies to  
25 invest in certified North Carolina capital companies.

26 **"§ 105-228.10B. Definitions.**

27 The following definitions apply in this Article:

28 (1) Certified capital. – Defined in G.S. 53A-37.

29 (2) Certified North Carolina capital company. – A certified North  
30 Carolina capital company created under Article 3 of Chapter 53A of  
31 the General Statutes.

32 (3) Commissioner. – The Commissioner of Insurance.

33 **"§ 105-228.10C. Premiums tax credit for investments.**

34 (a) Credit. – A person who invests certified capital in a certified North Carolina  
35 capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5  
36 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the  
37 taxpayer during the taxable year. To claim the credit allowed by this section, the  
38 taxpayer must provide the Commissioner any supporting documentation the  
39 Commissioner requires.

40 (b) Limitations. – The taxpayer may not take the entire credit for the taxable year  
41 the investment is made, but may take up to ten percent (10%) of the aggregate credit  
42 allowed under this section for that taxable year and for each succeeding taxable year until  
43 the entire credit has been used. The credit allowed by this section may not exceed the

1 taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits  
2 allowable except payments of tax by or on behalf of the taxpayer. Subject to the ten  
3 percent (10%) limitation, any unused portion of the credit may be carried forward to  
4 succeeding taxable years.

5 (c) Transfer of Credit. – A taxpayer may transfer a credit allowed under this  
6 section to another taxpayer. The taxpayer must apply for the approval of the  
7 Commissioner before transferring the credit. The application shall be in the form  
8 prescribed by the Commissioner. The application shall identify the proposed transferor  
9 and transferee, state the transferor's tax credit balance before and after the proposed  
10 transfer, state the amount of the credit to be transferred and the proposed date of the  
11 transfer, and include any other information the Commissioner requires regarding the  
12 proposed transfer.

13 The Commissioner shall approve the proposed transfer if the application is accurate  
14 and complete and the Commissioner determines that the proposed transfer will not have  
15 an adverse effect on either taxpayer or their policyholders or shareholders. Within 60  
16 days after receiving an application, the Commissioner shall notify the applicant that the  
17 proposed transfer has been approved or disapproved.

18 The Commissioner shall maintain records and monitor all transferred credits to ensure  
19 that transfers do not result in multiple parties claiming the same credit.

20 **"§ 105-228.10D. Effect of decertification.**

21 If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax  
22 credit or carryforward of a tax credit for an investment in the company is allowed under  
23 this Article for a taxpayer's taxable year beginning in the calendar year the decertification  
24 occurred or for subsequent taxable years. Decertification of a certified North Carolina  
25 capital company does not affect a tax credit allowed under this Article for a taxpayer's  
26 taxable year that began before the calendar year in which the decertification occurred.

27 **"§ 105-228.10E. Report by Commissioner.**

28 The Commissioner shall report to the Legislative Research Commission by October 1  
29 of each year the total amount of credit allowed under this Article during the preceding  
30 fiscal year and the number of taxpayers that claimed a credit under this Article during the  
31 preceding fiscal year."

32 Sec. 5. G.S. 58-6-25(a) reads as rewritten:

33 "(a) Charge Levied. – There is levied on each insurance company an annual charge  
34 to defray the cost to the Department of regulating the insurance industry and other  
35 industries and the general administrative expenses of the State incident thereto. As used  
36 in this section, the term 'insurance company' means a company that pays the gross  
37 premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not  
38 include a hospital, medical, or dental service corporation regulated under Articles 65 and  
39 66 of this Chapter. The term 'insurance company' does not include a company regulated  
40 under Article 67 of this Chapter. The charge levied in this section is in addition to all  
41 other fees and taxes. The charge shall be at a percentage rate of the company's premium  
42 tax liability for the taxable year. In determining an insurance company's premium tax

1 liability for a taxable year, the credit allowed by G.S. 105-228.10C shall be disregarded  
2 and additional taxes imposed by G.S. 105-228.8 shall be disregarded."

3 Sec. 6. The title of Chapter 53A of the General Statutes reads as rewritten:

4 **"CHAPTER 53A.**

5 **"BUSINESS DEVELOPMENT CORPORATIONS AND NORTH**  
6 **CAROLINA CAPITAL RESOURCE CORPORATIONS. AND ACCESS TO**  
7 **CAPITAL."**

8 Sec. 7. The title of Article 3 of Chapter 53A of the General Statutes reads as  
9 rewritten:

10 **"ARTICLE 3.**

11 **"NORTH CAROLINA ENTERPRISE CORPORATIONS. CORPORATIONS AND**  
12 **CERTIFIED NORTH CAROLINA CAPITAL COMPANIES."**

13 Sec. 8. G.S. 53A-35 and G.S. 53A-47 are repealed.

14 Sec. 9. G.S. 53A-36 reads as rewritten:

15 **"§ 53A-36. Legislative findings and purpose.**

16 (a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North  
17 Carolina a serious shortage of mezzanine finance capital and credit available for  
18 investment in rural ~~areas~~ areas and other areas in the State. This shortage of mezzanine  
19 finance capital and credit is severe throughout ~~the rural areas of~~ the State, has persisted for  
20 a number of years, and constitutes a grave threat to the welfare and prosperity of all  
21 residents of the State. The lack of access to capital prevents North Carolina businesses  
22 from creating jobs that would otherwise enhance the economy of the State and provide  
23 livelihoods for North Carolina citizens.

24 (b) The General Assembly finds ~~and declares further~~ that private enterprise and  
25 existing federal and State governmental programs have not adequately alleviated the  
26 severe shortage of mezzanine finance capital and credit available for investments in ~~rural~~  
27 ~~areas in the~~ this State.

28 (c) The General Assembly finds ~~and declares~~ that it is a matter of grave public  
29 necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to~~  
30 ~~be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit  
31 for investment in rural areas of the State. North Carolina Enterprise Corporations shall  
32 help eliminate barriers to rural economic development by providing mezzanine finance  
33 capital and credit, and other types of financing as appropriate, to businesses in rural areas  
34 that have been unable to obtain sufficient financing through traditional financial  
35 institutions.

36 (d) The General Assembly finds that it is a matter of grave public necessity that  
37 certified North Carolina capital companies be authorized to be created as venture capital  
38 companies whose primary business activity is the investment of cash in small North  
39 Carolina business ventures that are in need of capital for survival, expansion, new  
40 product development, or similar purposes."

41 Sec. 10. G.S. 53A-38(a) reads as rewritten:



1       "(a) One or more persons, a majority of whom are residents of this State, may, by  
2 filing a certificate of incorporation as provided in subsection (b), incorporate a North  
3 Carolina Enterprise Corporation under the provisions of this ~~Article-Part.~~"

4           Sec. 11. G.S. 53A-41 reads as rewritten:

5 **"§ 53A-41. Governing law.**

6       Except as otherwise provided in this ~~Article-Part,~~ a North Carolina Enterprise  
7 Corporation shall be governed by Chapter 55 of the General Statutes."

8           Sec. 12. G.S. 53A-42 reads as rewritten:

9 **"§ 53A-42. Powers.**

10       A North Carolina Enterprise Corporation created under this ~~Article-Part~~ shall have all  
11 the powers conferred on business corporations by Chapter 55 of the General Statutes."

12           Sec. 13. Sections 4 and 5 of this act and G.S. 53A-73, as enacted by Section 2  
13 of this act, become effective for taxable years beginning on or after January 1, 1996, and  
14 apply to investments made on or after July 1, 1996. The remainder of this act is effective  
15 upon ratification. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as  
16 enacted by this act, are repealed effective for investments made on or after January 1,  
17 1999.